



December 8, 2000

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2000-4637

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141990.

The City of El Paso (the "city") received a request for the cellular phone bills for the city-issue mobile telephone assigned to assistant police chief, George DeAngelis, for the months of June, July, and August 2000. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we address your argument regarding a portion of the requested information. You explain that the city is billed by its cellular telephone carrier for periods beginning on the sixteenth of a given month and ending on the fifteenth of the following month. You further explain that at the time the city received the request for information, it had not yet received the cellular telephone bill for the time period beginning August 16, 2000 and ending September 15, 2000. Therefore, you argue that the city has no obligation under the Public Information Act to release the bill that pertains to the second half of August 2000. We agree that the city has no obligation to release any bills that were not in its possession at the time it received the request for information. *See* Open Records Decision No. 558 at 1-2 (1990) (noting that Public Information Act does not ordinarily require a governmental body to obtain information not in its possession). Therefore, the city need not release the cellular telephone bill that pertains to the second half of August 2000.

We now turn to your argument regarding section 552.108(b). Section 552.108(b) provides in pertinent part as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the submitted bills contain the cellular telephone numbers assigned to various police officers, and one cellular telephone number assigned to a civilian employee who works in the Communications Section of the police department. You further explain that these individuals all need to be continually available by telephone in order to administer their various law enforcement duties. You state that releasing these individuals' cellular telephone numbers would interfere with "law enforcement operations at very critical times." Based on these representations, we believe that the cellular telephone numbers of the officers as well as the civilian employee are subject to section 552.108(b)(1). *See* Open Records Decision No. 506 (1988). Accordingly, the department may withhold these numbers under 552.108(b)(1).

You also argue that the submitted telephone bills contain home telephone numbers of police officers. Subsection 552.117(2) provides for the confidentiality of current and former peace officers' home addresses, home telephone numbers, social security numbers, and family member information. We agree that the police officers' home telephone numbers are excepted from disclosure under section 552.117(2). Therefore, the city must withhold these numbers.

In summary, in regard to the current request for information, the city has no obligation under the Public Information Act to release the portion of the requested telephone bills that pertains to the second half of August 2000, because the city did not possess this information at the time it received the request for information. The city may withhold the cellular telephone numbers assigned to the police officers and the civilian police department employee under section 552.108(b)(1). The city must withhold the home telephone numbers of police officers under section 552.117(2). The city must release the remaining responsive information. *See* Gov't Code § 552.022(a)(3).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\er

Ref: ID# 141990

Encl: Submitted documents

cc: Ms. Leticia Zamarripa  
KDBC-TV  
2201 East Wyoming Avenue  
El Paso, Texas 79903  
(w/o enclosures)